

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION**

SCHARLENE BROOKS, STEPHEN N. FOX &
NORA FOX JTWROS, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

UNITED DEVELOPMENT FUNDING III,
UMT SERVICES, INC., UMT GENERAL
SERVICES, L.P., UMT LAND
DEVELOPMENT, L.P., UMT HOLDINGS, L.P.,
HOLLIS M. GREENLAW, TODD ETTER,
CARA D. OBERT, BEN L. WISSINK,

Defendants.

Civil Action No. 4:20-cv-00150-O

Honorable Reed O'Connor

**MOTION OF THE UDF DEFENDANTS TO DISMISS PLAINTIFFS'
CORRECTED SECOND AMENDED CLASS ACTION COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants United Development Funding III, L.P. (“UDF III”), UMT Services, Inc. (“UMTS”), UMT General Services, L.P. (“UMTH GS”), UMT Land Development, L.P. (“UMTH LD”), and UMT Holdings, L.P. (“UMTH”) (collectively, the “UDF Entity Defendants”) and Hollis M. Greenlaw, Todd Etter, Cara D. Obert, and Ben L. Wissink (collectively, the “UDF Individual Defendants” and, together with the UDF Entity Defendants, the “UDF Defendants”), by and through their respective counsel, respectfully move pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Corrected Second Amended Class Action Complaint (“Corrected Second Amended Complaint” or “CSAC”) of Plaintiffs Scharlene Brooks (“Plaintiff Brooks”)

and Stephen N. Fox and Nora Fox JTWROS (the “Fox Plaintiffs” and, together with Plaintiff Brooks, the “Plaintiffs”). In support of thereof, the UDF Defendants state as follows:

SUMMARY

The CSAC in this action purports to assert claims under the Texas Securities Act (“TSA”) based upon allegations that prospectuses, registration statements, and other public filings made by UDF III ostensibly contained material misstatements or omitted material information. Plaintiffs purport to assert claims under the TSA for asserted fraudulent sale of securities against UDF III (Count I) (*id.* at ¶¶ 102-04), for control person liability against all UDF Defendants, with the exception of UDF III (Count II) (*id.* at ¶¶ 105-10), and for aiding and abetting primary violations of the TSA against all UDF Entity Defendants, with the exception of UDF III (Count III) (*id.* at ¶¶ 111-21). Underpinning each of Plaintiffs’ purported claims is the allegation that the UDF Defendants have engaged in a “Ponzi-like scheme” by failing to disclose that UDF III’s borrowers were paying down loans originated by UDF III using the proceeds of loans provided by subsequent United Development Funding (“UDF”) programs, and, similarly, that money used to pay distributions to UDF III investors came from funds received by UDF III from borrowers which had obtained loans from subsequent UDF programs.

GROUND FOR DISMISSAL

Following the filing of the UDF Defendants’ Motion for Sanctions Pursuant to Rule 11 of the Federal Rules of Civil Procedure (the “Motion for Sanctions,” ECF No. 101), Plaintiffs abandoned allegations that had been included in their prior complaints which purported to allege that the statute of limitations applicable to their claims had been tolled. Thus, the CSAC now makes clear that their claims are time-barred.

As an initial matter, Plaintiff Brooks’ TSA claims were previously dismissed by this

Court, with prejudice, in its April 15, 2020 Order. (ECF No. 89.) In that Order, the Court held that the applicable statute of repose precluded Plaintiff Brooks' TSA claims "in their entirety." Despite this, the CSAC asserts the very same claims on behalf of *both* Plaintiff Brooks and the Fox Plaintiffs. Given the Court's prior Order, Plaintiff Brooks' claims should be dismissed (again), with prejudice, and she should be barred from continuing to assert such claims.

The Fox Plaintiffs' purported TSA claims also are time barred by the three-year statute of limitations applicable to their TSA claims. As early as December 2015, the Fox Plaintiffs knew – or through the exercise of reasonable diligence should have known – of the purported "facts" giving rise to their asserted claims. Despite this, the Fox Plaintiffs did not file their Class Action Complaint until February 4, 2019, more than three years after the statute of limitations began to run on their TSA claims. Unlike their complaints filed before the filing of the UDF Defendants' Motion for Sanctions, the CSAC does not attempt to allege a basis for tolling of the statute of limitations.

LOCAL RULE 7.1

Pursuant to Local Rule 7.1, the UDF Defendants' contentions of fact and/or law and arguments and authorities are set forth in the accompanying brief submitted herewith.

CONCLUSION AND PRAYER

WHEREFORE, the UDF Defendants respectfully request that the Court dismiss the Plaintiffs' action with prejudice, and that it grant the UDF Defendants any other or further relief, at law or in equity, to which they may be entitled.

Dated: June 5, 2020

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CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.1(d), I certify that all counsel of record who have appeared in this case received a copy of this document via the Court's CM/ECF system on June 5, 2020.

/s/ Paul J. Walsen

Paul J. Walsen